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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,483	02/12/2001	Donald Gordon	DIVA/006 DIV1	9109

26291 7590 05/04/2005

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EXAMINER

HAILU, TADESSE

ART UNIT	PAPER NUMBER
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2173

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/781,483	Applicant(s) GORDON ET AL.	
	Examiner Tadesse Hailu	Art Unit 2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6, 51-62, 64 and 65 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 7-50 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |



DETAILED ACTION

1. This Office Action is in response to the Amendment submitted/entered on February 1, 2005 for the patent application number 09/781,483.
2. The present patent application claims priority from provisional application number 60/034,490, filed on Jan 13, 1997.
3. The pending claims 1-62, 64-65 are examined herein as follows.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-2 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Data structures not claimed as embodied in computer readable media are descriptive material *per se* and are not statutory because they are neither physical "things" nor statutory processes. (See e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held non-statutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and

functional interrelationships between the data structure and the medium which permit the data structure's functionality to be realized and is statutory.

5. Claims 7-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 7 recites "A guide page comprising:" "a video layer", "a graphic layer" and "a control layer". These layers are software components. With Consistent, explicit and deliberate definitions in the specification, the alleged "guide page" does not necessarily include hardware. Said "guide page" is not tangibly embodied in a manner so as to be executable. For at least this reason claim 7 is non-statutory. Claims 40 and 45 recite "an interactive program guide (IPG)" comprising similar software components with claim 7, for the same reason given to claim 7, these claims are also non-statutory. The claims that depend on independent claims 7, 40 and 45 are also non-statutory.

Allowable Subject Matter

6. Claims 4-6, and 51-62, and 64-65 are allowed.

The following is an examiner's statement of reasons for allowance: while the applier art, Killian, discloses interactive television guide supported by Java applet, But Killian fails to explicitly teach a plurality of logically linked applets, wherein each of the applets defining a graphical layer, a video layer and a control layer, as recited and/or arranged in the claims.

7. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: claim 3 recites at least said "*linked applets*" as described in the above allowable claims. Thus, for the same reason, Killian fails to explicitly teach linked applets, associated with video layer, control layer and graphical layer as recited and/or arranged in the claim 3.

CONCLUSION

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tadesse Hailu, whose telephone number is (571) 272-4051. The Examiner can normally be reached on M-F from 10:00 - 630 ET. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, John Cabeca, can be reached at (571) 272-4048 Art Unit 2173.

8. An inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Examiner Tadesse Hailu
Art Unit 2173 - Operator Interface
4/25/05

